

Chapter 46

HEALTH AND SANITATION

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ARTICLE I. HEALTH OFFICER

Sec. 46-1. Position created; appointment.

- (a) There is hereby created the position of city health officer for the city.
- (b) The Mayor, subject to council approval, shall appoint a qualified person to serve as city health officer.

(Ord. No. 90, §§1, 2, 6-23-1994)

Sec. 46-2. Term.

The term of city health officer shall be for a period of two years and coincide with the term of the Mayor. (Ord. No. 90, §3, 6-23-1994)

Sec. 46-3. Compensation.

The city health officer shall receive compensation based on duties performed at a reasonable professional rate and shall receive no salary or retainer. Necessary expenses, if any, shall be reimbursed after the same are incurred. (Ord. No. 90, §4, 6-23-1994)

Sec. 46-4. Duties.

The city health officer shall perform those duties described by statute and custom and upon the direction of the Mayor or council. (Ord. No. 90, §5, 6-23-1994)

Secs. 46-5 - 46-10. Reserved.

ARTICLE II. FOOD ESTABLISHMENTS

Sec. 46-11. Adoption of state rules.

The city hereby adopts by reference the provisions of the current rules or rules as amended by the Texas Board of Health found in 25 Tex. Admin. Code, §§ 229.161--229.171 and 229.173--229.175, regarding the regulation of food establishments in this jurisdiction. (Ord. No. 259, §2 (A), 8-26-2004)

Sec. 46-12. Definitions.

The following shall have the meaning as indicated for the purpose of this article:

Authorized agent or employee means the employees of the regulatory authority.

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, and/or a roadside food vendor.

Mobile food unit means any vehicle from which food is prepared or sold other than foods prepared and prepackaged in a state licensed and inspected facility.

Municipality means the City of Helotes.

Regulatory authority means the governing body (City Council) of the City of Helotes.

State rules means state rules found at 25 Tex. Admin. Code, §§229.161--229.171 and 229.173--229.175. These rules are also known as the Texas Food Establishment Rules.

(Ord. No. 259, §2 (B), 8-26-2004)

Sec. 46-13. Permits generally; food manager; mobile food units.

- (a) A person may not operate a food establishment without a permit issued by the regulatory authority. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this article. A valid permit must be posted in or on every food establishment regulated by this article.
- (b) Each food establishment must have at least one qualified food manager on duty during all hours in which food is being prepared or served.
- (c) The city shall issue either a food manager's or food handler's permit annually to all persons engaged or employed in, around or about food establishments who have been duly qualified by written exam.
- (d) A person may not operate a mobile food unit within the city.

(Ord. No. 259, §3, 8-26-2004)

Sec. 46-14. Application for permit; inspection; permit fees.

- (a) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required, may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and the same information is required for a renewal permit as for an initial permit.
- (b) Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory authority shall inspect the proposed food establishment to determine compliance with state laws and rules and regulations of this article. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
- (c) A fee schedule will be established and reviewed periodically to ensure that the fee being charged sufficiently reimburses the regulatory authority for the cost to enforce this article.

(Ord. No. 259, §4, 8-26-2004)

Sec. 46-15. Review and approval of plans.

- (a) Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the city for review before the work is begun. Extensive remodeling means 20 percent or greater of the area of the food establishment is to be remodeled. The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the city if they meet the requirements of the rules adopted

by this article. The approved plans and specifications must be followed in construction, remodeling or conversion.

- (b) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

(Ord. No. 259, § 5, 8-26-2004)

Sec. 46-16. Suspension of permit.

- (a) The city may, without warning, notice, or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by subsection (b) of this section. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.
- (b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the city by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The city may end the suspension at any time if the reasons for suspension no longer exist.

(Ord. No. 259, § 6, 8-26-2004)

Sec. 46-17. Revocation of permit.

- (a) The city may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the city in the performance of its duties. Prior to revocation, the city shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the city by the holder of the permit within such ten-day period.
- (b) If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(Ord. No. 259, §7, 8-26-2004)

Sec. 46-18. Notices; hearings.

- (a) A notice as required in these rules is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the regulatory authority (the city).
- (b) The hearings provided for in these rules shall be conducted by the regulatory authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the city shall make final findings, and shall sustain, modify or rescind any notice or order considered in the

hearing. A written report of the hearing shall be furnished to the holder of the permit by the regulatory authority.

(Ord. No. 259, § 8, 8-26-2004)

Sec. 46-19. Penalty; additional remedies.

(a) Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than \$2,000.00.

(b) The city may seek to enjoin violations of these rules.

(Ord. No. 259, §9, 8-26-2004)

Secs. 46-20 - 46-30. Reserved.

ARTICLE III. SMOKING

Sec. 46-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means a member of the city staff appointed by the Mayor, designated to administer and enforce the provisions of this article.

Employee means any person who is employed by any employer for direct or indirect monetary wages or profit, or is in a position that would lead one to believe that such person is so employed.

Employer means any person, partnership, corporation, association or other entity that employs one or more persons.

Enclosed means closed in by a roof and walls with appropriate openings for ingress and egress, but may not include areas commonly described as public lobbies.

Food establishment means any operation engaged in the preparation or sale of prepared ready-to-eat food, if such operation accounts for more than 50 percent of annual gross sales receipts.

Smoke or *smoking* means and includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting, emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind.

(Ord. No. 163, §1, 7-12-2001)

Sec. 46-32. Smoking prohibited in government buildings; signage.

(a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product, or any lighted or burning pipe, cigar, cigarette of any kind, or smoking equipment or device, in any of the following: indoor or enclosed areas of any enclosed building or portion thereof owned, operated, and under the control of the city or any governmental entity.

(b) The administrator shall direct that a sign shall be posted conspicuous to ordinary public view, at or near each public entrance to each city building. The sign shall contain the words "No

smoking except in designated areas, City of Helotes ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.

(Ord. No. 163, §2, 7-12-2001)

Sec. 46-33. Smoking in food establishments.

- (a) A food establishment which has indoor or enclosed dining areas shall provide separate indoor or enclosed dining areas for smoking and nonsmoking patrons.
- (b) A nonsmoking area in a food establishment must:
 - (1) Be separated from the smoking area by a minimum of four feet of contiguous floor space, a partition, or a wall;
 - (2) Be situated so that air from the smoking area is not drawn into or across the nonsmoking area, or the smoking area shall be separately ventilated;
 - (3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking; and
 - (4) Have ashtrays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.
- (c) Each food establishment which has an indoor or enclosed dining area shall:
 - (1) Have and implement a written policy on smoking which conforms to this article;
 - (2) Make the policy available for inspection by employees; and
 - (3) Have signs, conspicuous to ordinary view, at each public entrance to the establishment indicating that nonsmoking seating is available.
- (d) Non-dining areas of any food establishments affected by this section to which patrons have access, including, but not limited to, food order areas, food service areas and restrooms, shall be designated as nonsmoking areas.
- (e) It is a defense to prosecution under this section that the food establishment is:
 - (1) An establishment which has indoor seating arrangements for less than ten patrons.
 - (2) An establishment which has more than 50 percent of its annual gross sales in alcoholic beverages.
 - (3) A physically separated bar area of a food products establishment otherwise regulated.The establishments covered above in subsections (e)(1) through (e)(3) of this section shall post a sign conspicuous to ordinary public view, at each public entrance to the establishment, which shall contain the words "this establishment does not provide for a nonsmoking section."
- (f) A person commits an offense if he smokes or possesses a burning tobacco, weed, or other plant product, or any lighted or burning pipe, cigar or cigarette of any kind, or smoking device, in an area of a food establishment designated as nonsmoking.

(Ord. No. 163, §3, 7-12-2001)

Sec. 46-34. Reporting of violations not required.

This article does not require the owner, operator, employer, manager or any employee of an establishment to report a violation of this article. (Ord. No. 163, § 4, 7-12-2001)

Sec. 46-35. Penalty.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be fined an amount not less than \$25.00 nor more than \$2,000.00. Each day that a violation is permitted to exist shall constitute a separate offense. (Ord. No. 163, §5, 7-12-2001)

Chapters 47 - 49. Reserved.

